

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution ALJ 176-3088
Administrative Law Judge Division
May 16, 2002

R E S O L U T I O N

RESOLUTION ALJ 176-3088. Ratification of preliminary determinations of category for proceedings initiated by application. The preliminary determinations are pursuant to Article 2.5, Rules 4, and 6.1 of the Commission's Rules of Practice and Procedure. (See also Rule 63.2(c) regarding notice of assignment.)

The Commission's rules and procedures which implement the requirements of Senate Bill (SB) 960 (Leonard, ch. 96-0856) are, for the most part, found in Article 2.5 of our Rules of Practice and Procedure. The rules and procedures were adopted by the Commission in D.97-11-021, which describes more fully the background to the development of these rules. Rule 4 describes the formal proceedings to which the SB 960 rules (Article 2.5) apply. Rule 6.1 requires the Commission to preliminarily determine a proceeding's category, whether the proceeding requires a hearing, and designate an Assigned Commissioner and Administrative Law Judge. Rule 6.1(a) states that the preliminary determination of category is not appealable but shall be confirmed or changed by Assigned Commissioner's ruling. Unless and until a preliminary determination is changed by such ruling, the preliminary determination of category governs the applicability of the other reforms that SB 960 requires. Rule 63.2 provides for petitioning the Commission to reassign a proceeding to another administrative law judge. Rule 63.2(c) establishes the time for filing such a petition. For purposes of Rule 63.2(c), notice of the assignment is the day the assignments associated with this preliminary categorization document appear in the Daily Calendar following the Commission business meeting.

The Categories

SB 960 makes sweeping changes in many aspects of the Commission's practices in an effort to improve the quality and timeliness of Commission decision making. It creates three categories of proceedings: adjudicatory, ratesetting, and quasi-legislative. The

applicability of many of the changes it requires depends upon the category assigned to the proceeding. For example, the ex parte rules which apply differ if the proceeding is categorized as adjudicatory rather than quasi-legislative. The Legislature defined each of these procedural categories in Section 7 of SB 960. Consistent with these definitions, the rules provide that:

“‘Adjudicatory’ proceedings are: (1) enforcement investigations into possible violations of any provision of statutory law or order or rule of the Commission; and (2) complaints against regulated entities, including those complaints that challenge the accuracy of a bill, but excluding those complaints that challenge the reasonableness of rates or charges, past, present, or future.

“‘Ratesetting’ proceedings are proceedings in which the Commission sets or investigates rates for a specifically named utility (or utilities), or establishes a mechanism that in turn sets the rates for a specifically named utility (or utilities). ‘Ratesetting’ proceedings include complaints that challenge the reasonableness of rates or charges, past, present, or future. For purposes of this Article, other proceedings may be categorized as ratesetting as described in Rule 6.1(c).

“‘Quasi-legislative’ proceedings are proceedings that establish policy or rules (including generic ratemaking policy or rules) affecting a class of regulated entities, including those proceedings in which the Commission investigates rates or practices for an entire regulated industry or class of entities within the industry.” (Rules 5(b), 5(c), and 5(d).)

Mixed or Unclear Category Proceedings

For a proceeding that may fall into more than one category, the rules allow parties to recommend that the Commission pick the most suitable category, or to recommend dividing the subject matter of the proceeding into different phases or one or more new proceedings, each with its own category. The rules provide that a proceeding that does not clearly fit into *any* of SB 960’s defined categories will be conducted under the rules applicable to the ratesetting category. As such a proceeding matures, the Commission may determine that the rules applicable to one of the other categories, or some hybrid of those rules, would be better suited to the proceeding.

As stated in D.97-06-071, ratesetting proceedings typically involve a mix of policymaking and factfinding relating to a particular public utility. Because proceedings that do not clearly fall within the adjudicatory or quasi-legislative categories likewise typically involve a mix of policymaking and factfinding, the ratesetting procedures are, in general, preferable for those proceedings.

Next Steps

As stated above, this preliminary determination of category is not appealable. Once interested parties have had an opportunity to respond to the initiating party's proposed category, the preliminary determination shall be confirmed or changed by Assigned Commissioner's Ruling pursuant to Rule 6(a)(3). This Assigned Commissioner Ruling may be appealed to the full Commission pursuant to Rule 6.4(a). Parties have 10 days after the ruling is mailed to appeal. Responses to the appeal are allowed under Rule 6.4(b), and must be filed and served not later than 15 days after the ruling is mailed. The full Commission will consider the appeal.

Any party, or person or entity declaring an intention to become a party is entitled to petition for reassignment of the proceeding to another Administrative Law Judge, as described in Rule 63.2. Such a petition must be filed no later than 10 days after notice of the assignment. For purposes of Rule 63.2(c), notice of the assignment is the day the assignments associated with this preliminary categorization document appear in the Daily Calendar following the Commission business meeting.

Conclusion

The Commission has reviewed the initial pleading of the utility applicants listed in the attached schedule and has made a preliminary determination of category and need for hearing, consistent with the requirements and definitions of Article 2.5 of its rules.

IT IS ORDERED that each proceeding listed in the attached schedule is preliminarily categorized, and the need for a hearing is noted.

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on _____, the following Commissioners voting favorably thereon:

WESLEY M. FRANKLIN
Executive Director

PRELIMINARY DETERMINATION SCHEDULE

Resolution ALJ 176-3088 (5/16/02)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A02-04-046 SOUTHERN CALIFORNIA EDISON COMPANY, (U 338-E), for Authority to Lease available land at the Johanna Substation to BRRVS, Inc.	Ratesetting	Ratesetting	NO
A02-04-047 SOUTHERN CALIFORNIA EDISON COMPANY, (U 338-E), for Authority to Lease available land on the West Lugo-Mira Loma Transmission Right of Way to Bernard R. Critchfield, Sr. and Arlene B. Critchfield	Ratesetting	Ratesetting	NO
A02-04-048 SOUTHERN CALIFORNIA EDISON COMPANY, (U 338-E), for Authority to Lease available land on the Barre-Ellis and Del Amo-Ellis Transmission Right of Way to Park Edison, LLC.	Ratesetting	Ratesetting	NO
A02-04-049 SOUTHERN CALIFORNIA EDISON COMPANY, (U338-E), for Authority to Lease Communication Facility Sites and Antenna Equipment Locations to Sprint PCS Assets, L.L.C. (fka Cox PCS Assets, L.L.C.)	Ratesetting	Ratesetting	NO
A02-04-050 CITY OF SAN DIEGO, SAN DIEGO METROPOLITAN TRANSIT DEVELOPMENT BOARD, for, an Order authorizing construction of an at-grade crossing on two existing light rail vehicle tracks at Fenton Parkway in the City of San Diego, California	Ratesetting	Ratesetting	NO
A02-05-002 SOUTHERN CALIFORNIA EDISON COMPANY, (U 904-G), for Authority to Increase its Gas Revenue Requirements to Reflect its Accomplishments for Demand- Side Management Program Year 1997, Energy Efficiency Program Year 2001, and Low-Income Program Years 2000 and 2001 in the 2002 Annual Earnings Assessment Proceeding ('AEAP')	Ratesetting	Ratesetting	YES
A02-05-003 PACIFIC GAS AND ELECTRIC COMPANY, Annual Earnings Assessment Proceeding ('AEAP') Application of Pacific Gas and Electric Company (U 39-M), for Approval of Energy Efficiency Shareholder Incentives for 2001 Program Year accomplishments, Second Claim for Incentives for the 2000 Accomplishments for Pre-1998 Programs, and Third Claim for Incentives for 1997 Program Year Accomplishments	Ratesetting	Ratesetting	YES

PRELIMINARY DETERMINATION SCHEDULE

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NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A02-05-004 SOUTHERN CALIFORNIA EDISON COMPANY, (U 338-E), for Authority to Increase, among other things, its Authorized Revenues for Electric Service in 2003, and to Reflect that Increase in Rates	Ratesetting	Ratesetting	YES
A02-05-005 SAN DIEGO GAS & ELECTRIC COMPANY, (U 902-M), for Approval of Incentives Associated with its Accomplishments for Demand-Side Management Program Years 1997, Energy Efficiency Program Year 2001, Low Income Program Years 2000 and 2001, Demand Response Programs 2001 in the 2002 Annual Earnings Assessment Proceeding ('AEAP')	Ratesetting	Ratesetting	YES
A02-05-006 FOSS, JEFF L., NATIONAL COMTEL NETWORK INC., Joint; for Authority to Transfer Control of National Comtel Network Inc. (U 5341-C) to Jeff L. Foss, an Individual	Ratesetting	Ratesetting	NO
A02-05-007 SOUTHERN CALIFORNIA EDISON COMPANY, (U 338-E), for Approval of Energy Efficiency and Low Income Energy Efficiency Performance Incentives for 2001 Program Year Accomplishments, the Second Installment of Demand-Side Management (DSM) and Low Income Shareholder Incentives for the 2000 Program Year, and the Third Installment of DSM Shareholder Incentives for the 1997 Program Year, and Approval of Interruptible Load Programs Memorandum Account Balances Recorded in 2001	Ratesetting	Ratesetting	YES
A02-05-008 STATE OF CALIFORNIA, DEPARTMENT OF TRANSPORTATION, for an order authorizing it to replace the East Martinez Underpass (Bridge No.28-0168), and to replace a nearby existing underpass structure (Br. No. 28C- 234), each under the tracks of the Burlington Northern Santa Fe Railway Company in the County of Contra Costa	Ratesetting	Ratesetting	NO
A02-05-009 BULLSEYE TELECOM, INC., for a Certificate of Public Convenience and Necessity to Operate as a Provider of Facilities-Based and Resold Local Exchange Service and Resold InterLATA and IntraLATA Interexchange Service within the State of California	Ratesetting	Ratesetting	NO

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NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A02-05-010 COMCAST BUSINESS COMMUNICATIONS, INC., (U 5830-C), for Approval of the Change of its Control that will occur indirectly as a result of its Placement with AT&T Broadband Phone of California, LLC under a new Parent, AT&T Comcast Corporation	Ratesetting	Ratesetting	NO
A02-05-011 AT&T BROADBAND PHONE OF CALIFORNIA, LLC, (U 5698-C), for Approval of the Change of its Control that will occur indirectly as a result of its Placement with Comcast Corporation under a new Parent, AT&T Comcast Corporation	Ratesetting	Ratesetting	NO
A02-05-013 VALENCIA WATER COMPANY, (U 342-W), for an order Authorizing it to Increase rates charged for water service in order to Realize Increased Annual Revenues of \$2,496,685 or 17.33% in test year 2003; of \$143,286 or 0.83% in test year 2004; and \$43,439 or 0.24% in Attrition year 2005; to Apply a Surcharge calculated to Generate a further sum of \$614,737 in Year 2003 Revenues; to Establish a Low Income Ratepayer Assistance Program, and to make Further Changes and Additions to its tariff for Water Service	Ratesetting	Ratesetting	YES
A02-05-016 UNITED TELECOM & TECHNOLOGIES INC., for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013	NDIEC Registration Application	Ratesetting	NO
A02-05-017 EQUAL ACCESS COMMUNICATIONS, LLC, dba EQUAL ACCESS, for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013	NDIEC Registration Application	Ratesetting	NO
A02-05-018 LONG DISTANCE SERVICES, INC., XO CALIFORNIA, INC., Application pursuant to Public Utilities Code Section 854 for Approval of the Indirect Transfer of Control of XO California, Inc. (U 5553-C) and XO Long Distance Services, Inc. (U 6272-C)	Ratesetting	Ratesetting	NO

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NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A02-05-020 ADVANCED TELCOM, INC., dba ADVANCED TELCOM GROUP, for authority to withdraw the provision of telecommunications services in the Bishop Ranch, Concord, Danville, Dublin, Livermore, Pleasanton, Walnut Creek, Corte Madera, Ignacio, Mill Valley, Novato, San Rafael, Napa, Sausalito, Calistoga, St. Helena, Belvedere/Tiburon, and Yountville areas.	Ratesetting	Ratesetting	NO
A02-05-021 BIDWELL WATER COMPANY, INC., THE DOUGALL FAMILY TRUST AND CRAIG DOUGALL, TRUSTEE, to transfer and the Dougall Family Trust and Craig Dougall, Trustee, to acquire the water system located in Greenville, Plumas County.	Ratesetting	Ratesetting	YES
A02-05-022 PACIFIC GAS AND ELECTRIC COMPANY, for authority to establish its authorized rates of return on common equity for electric utility operations and gas distribution for test year 2003	Ratesetting	Ratesetting	YES
A02-05-023 SOUTHERN CALIFORNIA EDISON COMPANY, for authority to lease communication facility sites and antenna equipment locations to Nextel of California, Inc.	Ratesetting	Ratesetting	NO
A02-05-025 SOUTHERN CALIFORNIA EDISON COMPANY, for consideration of rate of return on common equity, capital structure, cost factors for embedded debt and preferred stock, and overall rate of return for utility operations.	Ratesetting	Ratesetting	YES
A02-05-026 SIERRA PACIFIC POWER COMPANY, For authority to establish its authorized rate of return on common equity for electric operations for calendar year 2003.	Ratesetting	Ratesetting	YES
A02-05-027 EXPRESS TELEPHONE SERVICES, INC., For a certificate of public convenience and necessity to offer limited facilities-based local exchange, access and interexchange services.	Ratesetting	Ratesetting	NO

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NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A02-05-028 TELEMEX, LTD., For registration as an interexchange telephone corporation pursuant to the provisions of Public Utilities Code Section 1013.	NDIEC Registration Application	Ratesetting	NO
A02-05-029 LOOKING GLASS NETWORKS, INC., for a Certificate of Public Convenience and Necessity pursuant to Public Utilities Code Section 1001 to operate as a provider of facilities-based and resale Local Exchange and Interexchange Telecommunications Service.	Ratesetting	Ratesetting	NO
A02-05-030 MARGOT BRIDGES/DAVID CHILDERS, Joint Application For An Exemption From Commission Decision 86-05-078	Ratesetting	Ratesetting	NO